

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

JAMES JOSEPH MELUZIO,
Appellant,

v.

(Lead case)
CIVIL ACTION NO. 1:11CV58
BANKRUPTCY NO. 1:10:BK2083
ADV. P. NO. 1:10AP165
(Judge Keeley)

CAPITAL ONE BANK (USA), N.A.,
Appellee.

MARY KATHRYN ROMEO, and
THOMAS JOSEPH ROMEO,
Appellants,

v.

(Member case)
CIVIL ACTION NO. 1:11CV59
BANKRUPTCY NO. 1:10BK1814
ADV. P. NO. 1:10AP124
(Judge Keeley)

CAPITAL ONE BANK (USA), N.A.,
Appellee.

TINA KAY JONES, and
JASON MICHAEL JONES,
Appellants,

v.

(Member case)
CIVIL ACTION NO. 2:11CV33
BANKRUPTCY NO. 2:10BK1935
ADV. P. NO. 2:10AP125
(Judge Keeley)

CAPITAL ONE BANK (USA), N.A.,
Appellee.

APPELLANTS' CITATION OF SUPPLEMENTAL AUTHORITY

Pursuant to Federal Rule of Appellate Procedure 28(j), Appellants, by and through their counsel, submit two recently decided authorities to supplement their brief filed on June 1, 2011.

In the brief filed by Defendant-Appellee, Capital One Bank (USA), N.A., relied heavily on the cases of Lomax v. Bank of America, No. 3:10-cv-48 (N.D.W.Va Aug. 18, 2010), Frye v.

Bank of America, No. 3:10-cv-47 (N.D.W.Va Aug. 16, 2010), and Aguayo v. United States Bank, 658 F. Supp. 2d 1226.

Attached is Northern District of West Virginia Chief Judge John Preston Bailey's *Order Denying Defendant Capital One Auto Finance, Inc's Partial Motion For Judgment On The Pleadings*, entered in Civil Action No. 3:10-CV-40, O'Neal v. Capital One Auto Finance, today, September 29, 2011. In it, Judge Bailey abandoned the standards applied in the Frye and Lomax decisions, finding that those cases are no longer controlling of the preemption issue involving section 128(e) of the West Virginia Consumer Credit and Protection Act ("WVCCPA"). The Court ruled that section 128(e) of the WVCCPA does not prevent or significantly interfere with the exercise of powers under the National Bank Act and is accordingly not preempted.

Also attached is the ruling in Aguayo v. U.S. Bank, -- F.3d --, 2011 WL 3250465, issued by the Ninth Circuit Court of Appeals, filed August 1, 2011. The appellate court reversed the District Court's ruling by finding that the state law at issue was not preempted by the National Bank Act.

Respectfully submitted,

/s/ Todd Johnson
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CERTIFICATE OF SERVICE

I, TODD JOHNSON, counsel for Plaintiffs-Appellants, do hereby certify that I served a true and accurate copy of the *APPELLANTS' CITATION OF SUPPLEMENTAL AUTHORITY* on the following today, September 29, 2011, via CM/ECF and email:

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